

REMARKS

The Examiner's action of June 3, 2008 is noted in which the claims are finally rejected under 35USC102 and 103.

The Examiner has indicated certain 35USC112 problems and these have been solved by the present amendments to the claims.

The claims have been amended to include the claim limitation that there is a threshold circuit involved which detects the magnitude of the phase difference and it is the fact of the reported exceeding of the threshold that indicates the presence of an individual which is transmitted to a remote location.

First, what is absolutely clear is that unlike what Examiner suggests, nowhere in Frazier '240 is shown "threshold comparator (26)". It is a "detector". Nowhere is this detector described in the '240 patent and certainly nowhere is a comparator shown or thresholding taught. Thus the 35USC102 rejection will not lie.

It is noted that in the '240 patent "the phase rate of change is converted into a tone that allows an operator to recognize motion of an object." It is clear there is no thresholding here.

Thus, the Examiner is incorrect and the thresholding in the claim is nowhere shown in the '240 reference.

What is also clear in the Frazier '240 reference is that the indication of movement behind a wall is a tone generated by generator 28 and transmitted by an FM transmitter to a remote receiver.

Applicants' do not use this form of unthresholded signaling, as it results in unreliably subjective motion detection.

The Examiner cites the Whiting reference in combination with the '240 patent to indicate obviousness of using thresholding.

In the first place, the thresholding in the Whiting patent is an adaptive threshold coupled to a band-pass amplifier followed by a filter, the output which is coupled to an OR gate 28.

The signal that is thresholded in Whiting et al has absolutely nothing to do with the claimed thresholding of a sampled phase difference signal. In fact there are no phase difference signals at all in the Whiting reference.

It is Applicants' contention that the combination of Whiting and the '240 reference do not teach the claimed subject matter.

Moreover, it would not be obvious to take a reference which teaches transmitting a "tone" and combine it with a thresholding reference having nothing to do with either tones, phase differences or thresholding a sampled signal.

Whiting it will be seen, merely takes the return from a motion detector and thresholds it as it to amplitude.

This being the case it is Applicants' contention that the claims presented here with are free of the 35USC112 rejections and also are free of the art cited, as the art cited does not show or teach the claimed subject matter even if combined.

Moreover, it is Applicants' contention it would not be obvious to combine the references because the primary reference teaches a "tone" indicating movement, whereas the claimed

subject matter teaches "sampling a phase difference signal" and indicating when the sampled phase difference signal magnitude is above a predetermined threshold.

Allowance of the claims and issuances case is therefore earnestly solicited. Alternatively, entry of this Amendment for purposes of Appeal is requested.

Respectfully submitted,



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